

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Betsy S. Kanak,) No. CV-22-00740-PHX-SPL
vs. Plaintiff,) **ORDER**
Commissioner of Social Security)
Administration,)
Defendant.)

Plaintiff Betty S. Kanak seeks judicial review of the denial of her application for Social Security Disability Insurance and Supplemental Security Income under the Social Security Act, 42 U.S.C. § 405(g). Before the Court are Plaintiff's Opening Brief (Doc. 12), Defendant Commissioner of Social Security Administration's Answering Brief (Doc. 15), Plaintiff's Reply Brief (Doc. 16), and the Administrative Record (Doc. 9). Upon review, the Court affirms the Administrative Law Judge's decision (AR 11–40).¹

I. BACKGROUND

Plaintiff filed a Title II application for disability insurance benefits and a Title XVI application for supplemental security income on July 31, 2018, for a period of disability beginning on January 2, 2018, which was later amended to October 23, 2017. (AR 14). Plaintiff testified at an administrative hearing on February 10, 2021 (AR 51–91), after which the Administrative Law Judge (“ALJ”) found Plaintiff was not disabled.

¹ Administrative Record (*see* Doc. 9).

1 (AR 11–40). On April 8, 2022, the Appeals Council denied Plaintiff’s request for review
2 and adopted the ALJ’s decision as the agency’s final decision. (AR 1–3).

3 The Court has reviewed the medical evidence in its entirety and will discuss the
4 pertinent medical evidence in addressing the issues raised by the parties. Upon
5 considering the medical records and opinions, the ALJ evaluated Plaintiff’s disability
6 based on the following medically determinable impairments: obesity, status post lumbar
7 laminectomy, hypertension, seizure disorder, diabetes mellitus, bipolar disorder,
8 depression, generalized anxiety disorder, and posttraumatic stress disorder (“PTSD”).
9 (AR 17). Ultimately, the ALJ concluded that Plaintiff “has not been under a disability, as
10 defined in the Social Security Act, from October 23, 2017 through the date of this
11 decision.” (AR 39).

12 **II. LEGAL STANDARD**

13 A person is considered “disabled” for the purpose of receiving social security
14 benefits if he is unable to “engage in any substantial gainful activity by reason of any
15 medically determinable physical or mental impairment which can be expected to result in
16 death or which has lasted or can be expected to last for a continuous period of not less
17 than 12 months.” 42 U.S.C. § 423(d)(1)(A). The Social Security Administration’s
18 decision to deny benefits should be upheld unless it is based on legal error or is not
19 supported by substantial evidence. *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198
20 (9th Cir. 2008). “Substantial evidence is more than a mere scintilla but less than a
21 preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citation
22 omitted). “Where evidence is susceptible to more than one rational interpretation, the
23 ALJ’s decision should be upheld.” *Trevizo v. Berryhill*, 871 F.3d 664, 674–75 (9th Cir.
24 2017). The Court “must consider the entire record as a whole, weighing both the evidence
25 that supports and the evidence that detracts from the Commissioner’s conclusion, and
26 may not affirm simply by isolating a specific quantum of supporting evidence.” *Id.* at
27 675. The Court reviews “only the reasons provided by the ALJ in the disability
28 determination and may not affirm the ALJ on a ground upon which [she or] he did not

1 rely.” *Id.* The Court will not reverse for an error that is “inconsequential to the ultimate
 2 nondisability determination” or where the ALJ’s “path may reasonably be discerned,
 3 even if the [ALJ] explains [his] decision with less than ideal clarity.” *Treichler v.*
 4 *Comm’r of Soc. Sec.*, 775 F.3d 1090, 1099 (9th Cir. 2014) (citing *Alaska Dept. of Envtl.*
 5 *Conservation v. E.P.A.*, 540 U.S. 461, 497 (2004)).

6 **III. DISCUSSION**

7 Plaintiff argues that the ALJ improperly evaluated two medical opinions and
 8 improperly discredited Plaintiff’s symptom testimony. The court addresses both issues.

9 **a. Medical Opinions**

10 In 2017, the SSA revised its regulations regarding the evaluation of medical
 11 evidence. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed.
 12 Reg. 5844, 5844 (Jan. 18, 2017). Because Plaintiff filed her case after 2017, it is
 13 governed by the new regulations. (AR 17). The ALJ was therefore not required to adhere
 14 to a hierarchy of medical opinions. 20 C.F.R. § 404.1520c(a)–(b); *see Woods v. Kijakazi*,
 15 32 F.4th 785, 790 (9th Cir. 2022). Rather, the ALJ meets her burden with respect to
 16 medical opinions by articulating the persuasiveness of each opinion using factors set forth
 17 in the regulations. *Id.* Supportability and consistency are the most important of these
 18 factors, but ALJs may also consider the nature of the treatment relationship, the medical
 19 source’s specialization, and “other factors that tend to support or contradict a medical
 20 opinion.” 20 C.F.R. § 404.1520c(a)–(c). The Court considers Plaintiff’s arguments
 21 regarding the medical opinions of Dr. An Nguyen and Dr. Rosalie Hydock in turn.

22 *i. Dr. An Nguyen*

23 Dr. Nguyen, a clinical psychologist, evaluated Plaintiff on January 18, 2021. (AR
 24 2017). Dr. Nguyen diagnosed Plaintiff with chronic PTSD and recurrent moderate major
 25 depressive disorder. (AR 2023). In check-box forms expressly referring to the Social
 26 Security Commissioner’s Listing of Impairments, Dr. Nguyen opined that Plaintiff has
 27 extreme or marked limitations in her ability to interact with others and concentrate,
 28 persist, or maintain pace. (AR 2025, 2027). Dr. Nguyen further opined on the check-box

1 forms that Plaintiff's depressive disorder and PTSD are severe and persistent, that there is
2 evidence of treatment or a highly structured setting to diminish symptoms, and that
3 Plaintiff has a minimal capacity to adapt to changes in environment or demands. (AR
4 2026–27). In a written narrative on a separate form, Dr. Nguyen opined that Plaintiff "can
5 carry out simple instructions and make simple decisions" but that "she will have
6 difficulty carrying out detailed instructions; sustaining concentration; performing
7 activities within a schedule; working in coordination with others; sustaining an ordinary
8 routine without special supervision; and completing a normal workday at a consistent
9 pace." (AR 2030). Dr. Nguyen further wrote that although Plaintiff "can interact
10 appropriately with the general public, get along with coworkers, ask simple questions,
11 and maintain appropriate hygiene and behavior," Plaintiff "will have difficulty
12 responding appropriately" to criticism from supervisors and to work setting changes. (AR
13 2030).

14 The ALJ found that Dr. Nguyen's opinions were internally inconsistent and
15 inconsistent with reports and documentation from Plaintiff's treating medical service
16 providers. (AR 32–34). With respect to internal inconsistencies, the ALJ noted that Dr.
17 Nguyen's assessment that Plaintiff had at least marked limitations in interacting with
18 others is inconsistent with her opinion that Plaintiff could interact appropriately with the
19 general public and coworkers. (AR 33); *see* 20 C.F.R. Part 404, Subpart P, Appendix 1,
20 Listing 12.00(F)(2)(d) (defining a "marked limitation" as one where a claimant's
21 "functioning in this area independently, appropriately, effectively, and on a sustained
22 basis is seriously limited"). Likewise, the ALJ found that Dr. Nguyen's assessment that
23 Plaintiff had at least marked limitations in her ability to concentrate, persist, or maintain
24 pace is inconsistent with her opinion that Plaintiff could understand simple questions,
25 carry out simple instructions, and make simple decisions, as well as her observations that
26 Plaintiff had no difficulty following along with the evaluation and sharing details about
27 her history.

28 Plaintiff argues, based on a questionnaire completed by Dr. Nguyen on June 11,

1 2021 and submitted to the Appeals Council, that Plaintiff did, in fact, have difficulties
 2 during the evaluation consistent with a limited ability to concentrate, persist, or maintain
 3 pace. (Doc. 12 at 11); *see Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1159–
 4 60 (9th Cir. 2012) (holding that evidence submitted for the first time to the Appeals
 5 Council “is part of the administrative record, which the district court must consider in
 6 determining whether the Commissioner’s decision is supported by substantial evidence”).
 7 In that questionnaire, Dr. Nguyen wrote that although Plaintiff was noted to be “calm,
 8 friendly, and compl[ia]nt” with respect to the completion of the exam, she was “sad and
 9 anxious” and “cried many times when sharing historical information.”² (AR 559). Dr.
 10 Nguyen thus opined that in unpredictable or stressful situations, such as a working
 11 environment, Plaintiff would have difficulty with concentration, persistence, social
 12 interaction, and adaptation. (AR 559). But nothing in Dr. Nguyen’s June 11, 2021
 13 questionnaire explains why she opined after her January 18, 2021 evaluation that Plaintiff
 14 had marked limitations in interacting with others on one form while opining that Plaintiff
 15 could interact appropriately with the general public and coworkers on another. Nor does
 16 Dr. Nguyen’s questionnaire qualify her opinions that Plaintiff could understand simple
 17 questions, carry out simple instructions, and make simple decisions, which the ALJ
 18 rationally found to be inconsistent with marked limitations in concentration, persistence,
 19 and maintaining pace. *See Phillips v. Colvin*, 61 F. Supp. 925, 940 (N.D. Cal. 2014). The
 20 ALJ properly articulated inconsistencies within Dr. Nguyen’s opinions.

21 With respect to inconsistencies with records from Plaintiff’s treating providers, the
 22 ALJ noted that Plaintiff’s statement to Dr. Nguyen that her symptoms had not improved
 23 and had gotten worse was inconsistent with statements Plaintiff made at a medication

25 ² To be sure, the ALJ suggested that Plaintiff’s “calm, friendly, and complaint”
 26 demeanor was inconsistent with Dr. Nguyen’s findings that Plaintiff had a depressed and
 27 anxious mood, without mentioning that the notes about Plaintiff’s demeanor were
 28 describing her level of effort and cooperation with the examination. (AR 34, 2021). Dr.
 Nguyen’s June 11, 2021 narrative explains why those notes are not inconsistent. (AR
 559). Still, the other inconsistencies explained by the ALJ are sufficient to support her
 evaluation of Dr. Nguyen’s opinions. *See Doddridge v. Comm'r of Soc. Sec. Admin.*, No.
 CV-20-01926-PHX-SPL, 2022 WL 682621, at *3 (D. Ariz. Mar. 8, 2022).

1 management appointment five days earlier, on January 13, 2021, that she felt her
2 medications were working and wanted to continue them with no changes. (AR 32, 1962).
3 The ALJ also recounted Plaintiff's statements at a medication management appointment
4 on August 24, 2020 that a change in her medication had "really helped overall" and that
5 she felt much better. (AR 32, 10). This is a plain inconsistency, and Plaintiff makes no
6 argument otherwise.

7 In addition, the ALJ concluded that Dr. Nguyen's findings were "inconsistent with
8 the claimant['s] psychiatric nurse practitioner's repeated mostly normal mental status
9 examinations once the claimant's medications were stabilized or the findings and
10 opinions of the consultative psychologists." (AR 34). Plaintiff argues that "the ALJ has
11 given undue weight to mental status examinations, which are a diagnostic tool and not an
12 assessment of a patient's ability to sustain activity over the course of a full work day or
13 work week." (Doc. 12 at 10). But the Ninth Circuit routinely holds that inconsistency
14 between a medical provider's opinion of limitations and relatively normal mental status
15 examinations is a sufficient reason for an ALJ to discount a provider's opinion. *See, e.g.,*
16 *McCloud v. Saul*, 818 F. App'x 730, 734 (9th Cir. 2020); *Shorter v. Saul*, 777 F. App'x
17 209, 211 (9th Cir. 2019); *Sultes v. Berryhill*, 758 F. App'x 589, 592 (9th Cir. 2018);
18 *Whitten v. Colvin*, 642 F. App'x 710, 711–712 (9th Cir. 2016). Here, it was reasonable
19 for the ALJ to conclude that Dr. Nguyen's opinions that Plaintiff has marked limitations
20 were inconsistent with the mostly normal mental status examinations.

21 Ultimately, the Court finds that the ALJ provided a detailed and logical
22 explanation of several inconsistencies within Dr. Nguyen's opinions and between Dr.
23 Nguyen's opinions and the opinions and records of Plaintiff's other medical providers,
24 giving due consideration to the relevant factors required by the regulations. Thus, the
25 extent to which the ALJ discredited Dr. Nguyen's opinions is supported by substantial
26 evidence and was not legal error.

27 ///

28 ///

ii. *Dr. Rosalie Hydock*

Dr. Hydock, a licensed psychologist, evaluated Plaintiff on July 22, 2019. (AR 1078). Dr. Hydock opined that Plaintiff had minor impairments with understanding and memory; would have difficulty sustaining concentration to learn and use new material in an unfamiliar work setting; would be limited in her ability to connect with others and develop appropriate workplace relationships; and was impaired in her ability to respond to changes. (AR 1086).

The ALJ found that “Dr. Hydock’s opinions were generally supported by her examination” but that “the limitations with maintaining concentration and persistence are not well supported.” (AR 35). Specifically, the ALJ noted that Dr. Hydock’s conclusion was based on Plaintiff requiring redirection to stay on topic during the evaluation, but the ALJ found this unpersuasive because upon redirection, Plaintiff was able to respond to all questions and complete all tasks. (AR 35). The ALJ also noted that Plaintiff scored well on the Mini Mental Status Examination and that Dr. Hydock’s opinion was given before Plaintiff was stabilized on medications with her psychiatric nurse practitioner, who has since not documented problems with attention or concentration on mental status examinations. (AR 35). Thus, the ALJ concluded, the record supports only moderate limitations in concentration and persistence. (AR 35).

Even if, as Plaintiff argues, Plaintiff's need for redirection is consistent with Dr. Hydock's assessment of limitations in maintaining concentration and persistence, the ALJ's reasoning that Plaintiff's treating nurse practitioner has made contrary findings since stabilizing Plaintiff's medication is sufficient to support the ALJ's limited discrediting of Dr. Hydock's opinion.³ The ALJ articulated an inconsistency with another medical source with whom Plaintiff had a longer, more frequent, and more recent treating relationship. *See* 20 C.F.R. § 404.1520c(c)(2)-(3). The ALJ did not discredit Dr.

³ Although Plaintiff reported to Dr. Nguyen that her symptoms had not improved with medication, the ALJ properly discredited that finding as inconsistent with statements made to other providers, as explained above.

1 Hydock's opinion altogether, but merely the portion that conflicted with the psychiatric
 2 nurse practitioner's later findings. Accordingly, the ALJ did not err in discrediting Dr.
 3 Hydock's opinions to the extent she assessed more than moderate limitations in
 4 concentration and persistence.

5 **b. Symptom Testimony**

6 An ALJ must perform a two-step analysis to determine the credibility of a
 7 claimant's pain and symptom testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36
 8 (9th Cir. 2007). First, the ALJ must determine whether the claimant has presented
 9 objective medical evidence of an underlying impairment "which could reasonably be
 10 expected to produce the pain or other symptoms alleged." *Id.* at 1036. If the claimant
 11 meets this burden and there is no evidence of malingering, the ALJ must provide
 12 "specific, clear and convincing" reasons for rejecting the testimony. *Id.* at 1036. "The
 13 ALJ must state specifically which symptom testimony is not credible and what facts in
 14 the record lead to that conclusion." *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)
 15 ("To determine whether the claimant's testimony regarding the severity of her symptoms
 16 is credible, the ALJ may consider, for example: (1) ordinary techniques of credibility
 17 evaluation, such as the claimant's reputation for lying, prior inconsistent statements
 18 concerning the symptoms, and other testimony by the claimant that appears less than
 19 candid; (2) unexplained or inadequately explained failure to seek treatment or to follow a
 20 prescribed course of treatment; and (3) the claimant's daily activities.").

21 Here, the ALJ found that although Plaintiff's "medically determinable
 22 impairments could reasonably be expected to cause the alleged symptoms," Plaintiff's
 23 "statements concerning the intensity, persistence, and limiting effects of these symptoms
 24 are not entirely consistent with the medical evidence and other evidence in the record."
 25 (AR 26). First, Plaintiff argues that the ALJ's analysis was erroneous because Plaintiff's
 26 activities of daily living are not inconsistent with her testimony. The ALJ recounted as
 27 follows:

28 ///

1 [C]laimant was able to serve on a grand jury for four months
 2 after the amended alleged onset date, which presumably
 3 would require the ability to perform greater than one[-]step
 4 instructions. She also reported that she was caring for two
 5 homes, painting, caring for animals, gardening, and cooking.
 6 While there is evidence of social interaction deficits,
 7 including with large crowds, claimant has reported being able
 8 to shop for groceries, supervising her children's homework,
 9 and has a long time boyfriend.

10 (AR 37 (internal citations omitted)).

11 Initially, it does not appear that the ALJ relied on Plaintiff's daily activities as a
 12 significant reason for discrediting her symptom testimony. Although the ALJ suggested
 13 that Plaintiff's grand jury service demonstrated an ability to follow multi-step directions,
 14 the ALJ's residual functional capacity assessment still concluded only that Plaintiff "is
 15 able to perform simple routine work involving simple work related decisions and simple
 16 instructions." (AR 22). Likewise, consistent with the ALJ's acknowledgment that
 17 Plaintiff had social interaction deficits, her residual functional capacity assessment
 18 concluded that Plaintiff could "perform work that does not require more than occasional
 19 contact with the public and co-workers." (AR 22). But even if the ALJ did discredit
 20 Plaintiff's subjective testimony because of inconsistencies with her daily activities, the
 21 Court finds no fault in the ALJ's conclusion that Plaintiff's ability to serve on a grand
 22 jury indicates an ability to follow multi-step instructions. *See Yost v. Astrue*, No. 11 C
 23 1423, 2012 WL 2814373, at *15 (N.D. Ill. July 10, 2012) (affirming ALJ's discrediting
 24 of the plaintiff's symptom testimony based in part on the absence of evidence that she
 25 sought to avoid jury service due to her mental and physical impairments). Likewise, the
 26 ability to shop for groceries and maintain relationships indicates at least some capacity to
 27 interact with others. *See Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005) (affirming
 28 an ALJ's credibility finding where the ALJ explained that a plaintiff's daily activities
 "suggest that she is quite functional. She is able to care for her own personal needs, cook,
 clean, and shop. She interacts with her nephew and her boyfriend."). The ALJ properly
 made specific, rational findings as to Plaintiff's daily activities and her subjective
 testimony.

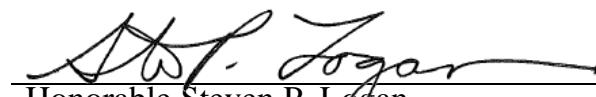
1 Plaintiff also repeats her arguments that mental status examinations are not
 2 evidence of a person's ability to sustain work activities and that Dr. Nguyen noted that
 3 Plaintiff's medications were not effective. As with medical opinions, relatively normal
 4 mental status examinations contrary to a claimant's testimony are proper support for an
 5 ALJ's decision to discredit the testimony. *See, e.g., Pietrzyk v. Comm'r of Soc. Sec. Admin.*,
 6 No. CV-19-5518-PHX-JFM, 2021 WL 9639924, at *12 (D. Ariz. Mar. 31,
 7 2021); *Stasha K. v. Saul*, No. 2:19-cv-00280-SMJ, 2020 WL 4495273, at *6 (E.D. Wash.
 8 Aug. 3, 2020); *Jared C. v. Comm'r of Soc. Sec.*, No. C19-5764 RAJ, 2020 WL 1322851,
 9 at *3 (W.D. Wash. Mar. 20, 2020). And as explained, the ALJ properly discredited Dr.
 10 Nguyen's note that Plaintiff's medications were not helping based on Plaintiff's reports to
 11 other providers that the medications had helped. Moreover, in addition to the reasons
 12 challenged by Plaintiff, the ALJ also detailed other reasons for discrediting Plaintiff's
 13 symptom testimony, including limited medical support for her claimed back pain,
 14 inconsistent treatment for her claimed impairments, and inconsistency with objective
 15 medical evidence and other medical opinions. The ALJ therefore provided specific, clear
 16 and convincing reasons for discrediting Plaintiff's subjective testimony.

17 **IV. CONCLUSION**

18 The Court finds that substantial evidence supports the ALJ's decision in this case.
 19 Her findings as to the persuasiveness of Dr. Nguyen's opinion and Dr. Hydock's opinion
 20 were supported by substantial evidence, and she provided clear and convincing reasons to
 21 reject Plaintiff's symptom testimony. Accordingly,

22 **IT IS ORDERED** that the April 26, 2021 decision of the ALJ (AR 14-40) is
 23 **affirmed**. The Clerk of Court shall enter judgment accordingly and **terminate** this action.

24 Dated this 15th day of May, 2023.

25 
 26 Honorable Steven P. Logan
 27 United States District Judge
 28